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PUBLIC EMPLOYMENT
RELATIONS BOARD

In the Matter of Interest
Arbitration

Between

IBT Local 238

and

Black Hawk County Sheriff
Department

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* Iowa PERB Case Number:
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* 80/Sector 2
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* Before: Harry Graham
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APPEARANCES: For IBT Local 238:

Yingtao Ho
Previant, Goldberg, Uelmen et al
1555 North RiverCenter Dr., Suite 202
Milwaukee, WI 53212

For Black Hawk County Sheriff:

Gary Ray
Ray and Associates
4403 First Ave. SE, Suite 407
Cedar Rapids, IA 52402-3221

Brian Gruhn
Gruhn & Blades
4089 21st Ave.
Cedar Rapids, IA 52404

Donald C. Hoskins
Fishel & Hoskins
766 13th St.
Marion. IA 52302

INTRODUCTION: Pursuant to the procedures of the Iowa Public
Employment Relations Board a hearing was held in this matter
before Harry Graham. At that hearing the parties were
provided complete opportunity to present testimony and

evidence. In the course of the hearing the parties indicated a Prohibited Practice Complaint (Ex. Ex. I-1-C) had been filed with the Public Employment Relations Board in connection with this matter. The Arbitrator inquired concerning whether or not a decision should issue in this proceeding before the Prohibited Practice Complaint was resolved. The parties agreed inquiry should be made of the PERB on this point. They also agreed the time limit for issuance of the decision in this proceeding would run from the date PERB responded to that inquiry or resolution of the Prohibited Practice Complaint, whichever PERB directed. On August 30, 2004 PERB indicated (Attachment A) that this decision should issue without stay resulting from pendency of the Prohibited Practice Complaint. Accordingly, by agreement of the parties the clock for issuance of this decision commenced on August 30, 2004.

There is a contentious issue involved in this proceeding. As related by the Employer the parties reached a Tentative Agreement (TA) on March 15, 2004. This Agreement was allegedly reached with the assistance of a mediator on the staff of the Iowa PERB. The TA was put into typescript by the Employer's Chief Negotiator (Er. Ex. I-2). It was rejected by the Union. As part of the rejection process the Union contended no TA was reached on March 15, 2004, a position it

reiterated at Factfinding and Arbitration. Following rejection of the TA the parties proceeded to Factfinding before Factfinder Rex H. Wiant. Factfinder Wiant believed the parties had reached a Tentative Agreement on March 15, 2004. He concluded that he would "give the TA great weight in his recommendations." The Employer urges that occur in this proceeding as well. The Union urges to the contrary.

In his recommendations Factfinder Wiant did indeed give great weight to what he concluded was the existing TA. At Factfinding the Employer stood on the TA. The Factfinder recommended the position of the Employer (the TA) on the issues before him. The report of the Factfinder was accepted by the Employer. It was rejected by the Union, hence this interest arbitration.

ISSUES: There are two issues in dispute between the parties. These are health insurance and wages. They will be discussed together.

POSITION OF THE UNION: The Union proposes there be a two percent (2%) wage increase on July 1, 2004, followed by another on January 1, 2005. It also proposes employees pay \$20.00 for single and \$35.00 for family health insurance coverage.

According to the Union there is a history in Black Hawk County of different wage increases for different bargaining

units. Looking at various bargaining units, (Union materials, p. 15) wage increases have ranged from 9.0% to 15.0% in the 2001-2005 period. No commonality of wage increase is apparent on this record. There is no pattern bargaining in the County according to the Union.

Turning to external comparisons, traditionally important in proceedings of this nature, shows that Black Hawk County Sheriff's Deputies lag their counterparts in comparable large counties in Iowa. (The parties agree upon the comparison group; Materials, p. 16). As Sheriff's Department personnel lag their colleagues, the proposal of the Union is preferable to that of the County to permit a catch-up to occur the Union contends.

Not only are deputies and dispatchers low in Black Hawk County, it takes them longer to progress through the steps of the salary schedule to reach top step. They are behind employees of comparable Sheriff's Departments through their careers. Other benefits, eg. sick leave and holidays are comparable in Black Hawk County.

The Union points out that the difference between the parties on the health insurance issue is small; \$18,360. The Employer operates a self-funded health insurance plan. As viewed by the data, that plan is in sound fiscal condition.

In the course of negotiations for the forthcoming

Agreement the Employer succeeded in removing some permissive items of bargaining from the Agreement. These were the grievance and arbitration procedure and the uniform allowance provided both deputies and civilian employees. Thus, employees of the Sheriff's Department lost value in the Agreement. A greater than county-wide settlement is required to make up the loss the Union asserts. Further, there is a variegated picture with respect to employee payments towards both single and family health insurance. (Materials, p. 12). Members of different bargaining units pay different amounts for both coverages. Similarly, the Union proposal compares well to the contributions being made by employees in the comparison group of counties. It is closer to the comparison group average (Materials, pp 13-14) than is the offer of the County. Thus, its proposal on both issues should be accepted the Union contends.

POSITION OF THE EMPLOYER: As noted above, the County asserts there was a Tentative Agreement reached in this situation. The TA represented its position at Factfinding. The Factfinder concluded a TA had been reached and he recommended its terms be accepted. At this proceeding the Employer position is the TA and the report of Factfinder Wiant. As part of that position, the County points out that all other bargaining units that negotiated this year agreed

to its proposal in this proceeding. That is; a 2.0% wage increase effective July 1, 2004 and employee payments towards health insurance coverage. These should be \$25.00 per month for single coverage and \$50.00 per month for family coverage. In the event there are two employees in the same household employed by the County they pay take one family plan or two single plans and pay for one single plan. (Er. Ex. I-4).

In support of the merits of its proposal the County points out that among comparable counties it has lost population. Its percentage loss is the greatest among the comparable group. Black Hawk County has the greatest county-wide tax rate but the poorest financial condition. Additionally, the wage increase proposal recited above is somewhat misleading. As is common in public employment there is a salary grid in County employment. Many bargaining unit members will move on the grid, resulting in a wage increase greater than 2.0%. Factoring that into consideration results in a 4.26% increase in wage costs payable to the bargaining unit.

Comparison data (Er. Exs. W-9-13) shows that bargaining unit members in the various classifications, eg. deputies, dispatchers, are not out of line when compared to their colleagues elsewhere. County employees are not at the top. Neither are they at the bottom of the scale when compared to

their counterparts in the comparison group. This applies for both wages and insurance. (Er. Exs. IN-5-6).

Without going into great detail the County has a very tight fiscal posture. This is summed up by Moody's Investors Service (Er. Ex. B-6). The County has an investment-grade bond rating, A1, but with a negative outlook. The undesignated General Fund balance has declined over time to \$1.4 million, an amount Moody's characterizes as "modest." In its "Outlook" Moody's opines that the County has a "negative outlook," expecting the reserve position of the County "may continue to decline due to pressures stemming from health insurance and salary increases, and the potential of further state aid cuts." In Moody's view "This is exacerbated by the county's limited revenue-raising flexibility under the \$3.5 mill General Fund cap with no available margin available." Based upon these factors, the County contends its offer is the more reasonable of the two before the Arbitrator and urges it be accepted.

DISCUSSION: The relevant Iowa law sets out criteria for an interest arbitrator to consider in arriving at a decision. The law does not specify the weight to be given to the various criteria by the neutral. This is as it should be. The parties bargain for the judgement of the neutral. In this particular situation the most important standard is the

comparison of wages and insurance for this bargaining unit with others in the County.

The history of the current round of negotiations in Black Hawk County demonstrates that there has occurred pattern bargaining on the matters of wages and insurance. That is, the other bargaining units with which the County negotiates have accepted the proposal of the County in this proceeding. That is a compelling point in favor of awarding the position of the Employer.

In 1994 I was the Factfinder in Fraternal Order of Police-Ohio Labor Council and State of Ohio, Bargaining Unit 1. (Highway Patrol). I observed:

The concept of pattern bargaining is well established in both the private and public sectors. The Employer and one Union negotiate. The resulting agreement serves as the pattern or benchmark for agreements between the State of Ohio and the other Unions. In this manner, both parties are protected from the phenomenon known as whipsawing. The existence of the OCSEA/AFSCME agreement places a very, very heavy burden upon a union which seeks to deviate from it.

More recently, in June, 2004, in IAFF 1267 and City of North Olmsted, OH. (SERB Case No. 03-MED-07-0736) I was of the view that the City:

...relies on pattern bargaining. That is, the concept in which a deal is struck with one or more groups and is then extended to others. The City asserts that the pattern of no wage increase in the first year of the Agreement (2004) should be extended to the Fire fighters. Failure to do so will undermine its bargaining tactic. Should the Fire Fighters secure a wage increase it will also subject the City to whipsawing...." In support of

the proposition that pattern bargaining should not be observed the Union cites the recently issued award of Factfinder Bernadette Marczely in IAFF and City of Bay Village. (SERB Case No. 03-MED-09-1019, April, 2004). In her report Factfinder Marczely repudiated the concept of pattern bargaining and declined to recommend for Fire Fighters in Bay Village the same wage increase as had been accepted by other groups of City employees.

I disagree with Factfinder Marczely. Her rationale is flawed. Pattern bargaining developed for a sound reason. Whether advanced by the Union or the Employer, its adoption promotes stability in industrial relations. Both the Employer and the Union are protected from whipsawing. Of course, deviations from the pattern occur. Perfect equality of contract language and compensation is impossible to achieve given the different conditions facing employees and employers. Special circumstances of an employer or group of employees are addressed within the general framework of a pattern settlement. But, whether the Union is dealing with multiple employers, or the Employer is dealing with multiple Unions, the central elements of pattern bargaining, eg. wages, health insurance, are observed. This is as it should be. The disregard of pattern bargaining enunciated by Factfinder Marczely is destructive of industrial relations stability which is important to Unions and Employers alike. (pp 2-4).


Once again, I reiterate that the concept of pattern bargaining is very, very important. The bargaining history in Black Hawk County demonstrates that in the current round of negotiations all bargaining units settled on a 2.0% wage increase. (This omits consideration of Bargaining Unit 6, the Attorneys who are a special case and not germane to this discussion. They received a 0.0% wage increase). Bargaining Units represented by AFSCME, the PPME and the Teamsters agreed upon the proposal of the County with respect to health insurance in this proceeding. There is no cogent reason to

depart from the accepted pattern of settlements in the County for the Sheriff's Department.

Further support of the proposal of the County is provided by the award of the Factfinder. As noted, the Employer embraced that proposal at arbitration. Absent error or changed circumstances that is an additional, powerful factor on its behalf in this proceeding. These factors call for an award of the proposal of the Employer.

AWARD: The proposals of the Employer on both disputed issues, wages and health insurance, are awarded.

Signed and dated this 9th day of September, 2004 at Solon, OH.



Harry Graham
Arbitrator



ATTACHMENT A

STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

PUBLIC EMPLOYMENT RELATIONS BOARD
JAMES R. RIORDAN, CHAIR

August 30, 2004

BY FAX ONLY

Harry Graham
32335 Brighton Park Blvd.
Solon OH 44139-1387

Dear Mr. Graham:

The Board has asked me to respond to your recent inquiry concerning an interest arbitration between Black Hawk County and Teamsters Local 238. As we understand the situation, you were selected to serve as the arbitrator in this impasse and conducted a hearing in the matter on August 26, 2004. You were apparently advised by the parties on or about that date that the County had recently filed a complaint with PERB alleging that Local 238 had committed a prohibited practice by making a final offer for arbitration which had not previously been offered to the County during the course of the parties' negotiations.

Apparently following discussion with the parties, you have inquired whether you should proceed with your duties as arbitrator pursuant to Iowa Code section 20.22, or whether you should hold the matter in abeyance pending the outcome of proceedings on the County's prohibited practice complaint.

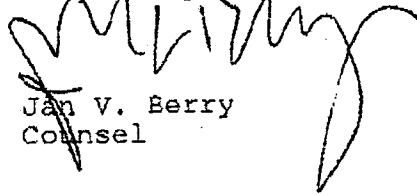
The Board is of the opinion that, absent an express agreement of the parties that you hold the matter in abeyance (which should be made a part of the record in the arbitration proceedings), you should proceed to make your selections and issue your written award in accordance with Iowa Code section 20.22 and PERB rules (except as those provisions may have been modified by an agreement between the parties in accordance with Iowa Code section 20.19). As is the case where a negotiability dispute is pending, in doing so you should assume that the parties' final offers are properly before you.

I trust this is sufficiently responsive to your inquiry, but if not, please feel free to contact me. Please advise us if the parties agree to defer further proceedings in the arbitration case pending PERB's resolution of the prohibited practice matter. In the absence of such

Harry Graham
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notification, we will look forward to our receipt of your timely award.

Very truly yours,



Jan V. Berry
Counsel

JVB/skm

cc: (by fax only) Gary Ray 319-393-4931
YingTao Ho 414-271-6308

CERTIFICATE OF SERVICE

I certify that on the 9th day of Sept., 20 07, I served the foregoing Award of Arbitrator upon each of the parties to this matter by (~~600~~ personally delivering) (✓ mailing) a copy to them at their respective addresses as shown below:

I further certify that on the 9th day of Sept, 20 07, I will submit this Award for filing by (personally delivering) (✓ mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Harry Graham
Harry Graham, Arbitrator
(Print Name)